STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Lexington County
Court of General Sessions

The Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ISRAEL MENDOZA CERVANTES,

PETITIONER.

Op. No. 2025-UP-423

APPELLATE CASE NO. 2022-001214

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that a Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in affirming the trial court's denial of Cervantes's motion to suppress his custodial statement where the statement was obtained in a coercive environment that included the handcuffing of a juvenile in his presence, thereby rendering the statement involuntary under the totality of the circumstances?
2. Did the Court of Appeals err in affirming the trial court's denial of Cervantes's motion for mistrial where the State's closing argument expressly invoked the "hand of one is the hand of all" doctrine after the trial court determined accomplice liability would not be charged?

STATEMENT OF THE CASE

This is an appeal from Petitioner Israel Mendoza Cervantes's convictions for trafficking heroin, 28 grams or more, possession of a weapon during a violent crime, and possession with intent to distribute cocaine. (R. pp. 309-11). Cervantes was arrested on October 24, 2018. (R. p. 51, lines 10-14). On August 22, 2022, the State called this case for trial. (R. p. 1, lines 5-12). Before trial, Cervantes moved to suppress statements made to law enforcement, which the trial court denied. (R. pp. 33-36).

Following a jury trial, Cervantes was convicted of trafficking heroin, 28 grams or more, possession of a weapon during a violent crime, and possession with intent to distribute cocaine. (R. p. 299, lines 9-17). He was sentenced to twenty-five years, five years, and fifteen years respectively, with the twenty-five and fifteen-year sentences to be served concurrently and the five-year sentence to be served consecutively to the twenty-five year sentence. (R. p. 310, lines 9-22). Thereafter, Cervantes timely served and filed a notice of appeal.

On December 23, 2025, the Court of Appeals issued an unpublished opinion affirming Cervantes's convictions. State v. Cervantes, Op. No. 2025-UP-423 (S.C. Ct. App. filed December 23, 2025). Cervantes filed a petition for rehearing on January 6, 2026. The Court of Appeals issued an Order denying the petition for rehearing January 27, 2026.

This Petition for Writ of Certiorari to the Court of Appeals follows.

STATEMENT OF FACTS

On October 24, 2018, law enforcement arrested Israel Mendoza Cervantes at 220 Leica Lane in West Columbia, South Carolina. (R. p. 51, lines 10-14). The Richland County narcotics unit had been investigating a drug operation; one of the targets was Cervantes and the other was Angel Ibarra, otherwise known as "Ace and Migo." (R. p. 61, lines 10-16). When the targets moved into Lexington County, Richland County narcotics investigator David Colwell contacted the Lexington County narcotics unit. (Id.). Lexington County law enforcement subsequently opened a drug investigation concentrating on both targets. (R. pp. 61-62). They began to conduct surveillance, primarily on 220 Leica Lane in West Columbia, Lexington County, which they determined to be the main location of the drug operation (R. p. 62, lines 17-25). Law enforcement learned that 220 Leica Lane was Ibarra's mom's residence, that Ibarra lived there, and that Cervantes did not live there. (R. p. 63, lines 5-16). However, law enforcement did observe Cervantes going to and from that location, specifically the shed located on the property. (R. p. 63, lines 11-14).

After several weeks of surveillance, the lead investigator, Meghan Dabkowski, obtained a search warrant for 220 Leica Lane, looking for items related to the suspected drug operation. (R. p. 66, lines 8-19). On October 24, 2018, the search warrant was executed on 220 Leica Lane by Lexington County SWAT and narcotics, as well as other members of law enforcement from Lexington and Richland Counties. (R. pp. 67-68). After SWAT secured the property, one fifteen year old juvenile was found in the residence and Cervantes was found in the shed. (R. p. 70, 83); Ibarra had left shortly before the execution of the search warrant. (R. p. 69, lines 22-25). Inside the shed, law enforcement found items near Cervantes, including multiple guns, ammunition, digital scales, a cutting agent, a clear glass with a spatula, packaged balloons, unpackaged

balloons, cash, a television hooked up to outside cameras, and four plastic bags containing a brown rock substance. (R. pp. 74-82, 115). Ultimately over 100 grams of heroin and at least 7.58 grams of cocaine were determined to have been found amongst the items in the shed. (R. pp. 219-220). No items related to the drug operation were found near the juvenile in the residence. (R. p. 71, lines 3-6).

Suppression Hearing

A pre-trial suppression hearing concerning Cervantes' unrecorded statement to law enforcement was held on August 22, 2022. (R. pp. 2-36).

According to testimony presented, Officer Brian Smith met with Cervantes and the juvenile when they were brought to him from their respective locations following the execution of the search warrant (R. pp. 4-5). Smith read Cervantes and the juvenile their Miranda Warnings simultaneously, while they were handcuffed and standing side by side. (R. pp. 9-10). Regarding Cervantes, Smith testified that he did not threaten Cervantes, that Cervantes indicated he understood his rights, and that Cervantes indicated he wished to speak with law enforcement. (R. pp. 6-7). Regarding the juvenile, Smith testified that law enforcement tried to contact his parents once they realized he was a juvenile, and he "believe[s] he was taken out of handcuffs at that point", but he was unable to identify whether this took place before or after Cervantes was interviewed by investigators. (R. p. 10, lines 5-18).

Investigators Colwell and Dabkowski then spoke with Cervantes, interviewing him in the front yard of 220 Leica Lane, away from everything else. (R. p. 19, lines 5-13). Colwell stated that he knew Smith had given Cervantes his Miranda warnings, that Cervantes indicated that wanted to speak with law enforcement, and that Colwell did not threaten Cervantes. Colwell

described Cervantes' statement to law enforcement as "He had claimed possession over the items and the drugs within the shed. He stated that him and his partner that we knew as Ace who had been identified as Angel were drug trafficking, making sales from that location." (R. p. 14, lines 10-13). Like Smith, Colwell was unable to state whether the juvenile had been released before or after Cervantes was interviewed. (R. p. 14, lines 20-22).

Investigator Dabkowski also testified that Smith administered Miranda, Cervantes agreed to speak with law enforcement, and Cervantes was not threatened. She further testified that Cervantes "informed us himself and the co-defendant in the case Angel Ibarra were running a drug operation out of that location at 200 Leica Lane and that the items located inside the shed belonged to the two of them." (R. pp. 18-20). Additionally, she said she had asked Smith to Mirandize both Cervantes and the juvenile together. (R. p. 18, lines 8-12). On cross-examination, however, Dabkowski admitted that the juvenile was found inside the house, not in the shed where Cervantes was found, and that there were no drugs found around the juvenile; the only drugs found in the house were "[a] possession amount in the co-defendant's bedroom." (R. pp. 22-23). In response to questions concerning her request that Smith mirandize the juvenile, Dabkowski stated that it was an automatic thing because he was in handcuffs, and that it didn't mean he was going to jail. (R. p. 23, lines 8-17). Dabkowski was certain that the juvenile had been released from handcuffs when she and Colwell interviewed Cervantes, but was not certain whether he had been released to his mom yet or not; if he was on scene, "[h]e was simply standing – he was left with Agent Smith simply until we had an adult there to release him to." (R. pp. 23-24).

Defense counsel called Cervantes to the stand, who denied being given Miranda, described being pulled onto the neighboring property, where the officers interviewing him,

specifically Colwell, stated that he was "about to do a lot of time. You're gonna do more than 25 to life, all these drugs, all these guns. Your life is over with. You know, we're gonna take [the juvenile.] We're gonna take his mother. Everybody's going to jail. . ." (R. pp. 26-27, 30). In response to this, Cervantes told Colwell "[E]nough. It has nothing to do with him. I told [Colwell] it was all me, that it was all between me and Angel, that we were the only ones that had anything to do with that." (R. p. 27, lines 22-25). Finally, Cervantes agreed that the juvenile was released to his mother, but stated that it was only after he had been interviewed and was headed to jail; during his interview, the juvenile "still stood there handcuffed." (R. p. 28, lines 18-21, 25).

At the close of testimony, Defense counsel moved for suppression of Cervantes's statement to law enforcement on the grounds the Cervantes' confession was not voluntarily given due to the threats made about involving the juvenile and the treatment of the juvenile in front of Cervantes. (R. pp. 33-34). In response, the State argued that the juvenile was simply detained as a result of common practice, that Cervantes was not threatened in any way, and that there was no connection between Cervantes's and the juvenile that would cause Cervantes to want to protect him. (R. pp. 34-35). The Court denied the motion to suppress, finding that Cervantes was administered his rights and voluntarily waived them, and noting that "[i]t appears that the testimony of all officers involved [was] that there was no threats, no promises, no rewards." (R. pp. 35-36).

Solicitor's Closing Argument

The State failed to request a charge on "the hand of one is the hand of all" during the jury charge conference before closing arguments. (R. pp. 222-231). During the solicitor's closing argument, she discussed "the hand of one is the hand of all" anyway, stating, "[s]ince we talked

so much about Ace and Migo, let's talk about the hand of one is the hand of all. The hand of one is the hand of all. If a crime is committed by two or more people acting together in committing a crime, the act of one is the act of all." (R. p. 240, lines 1-5). Defense counsel promptly objected and a brief bench conference ensued. (R. p. 240, lines 6-9). While the solicitor made no further mention of "the hand of one is the hand of all" in her remaining argument, she continued to link "Ace and Migo" throughout, having linked them at least fourteen times prior to her mention of "the hand of one is the hand of all", as well as referencing them working, "hand in hand", and continuing to link them at least an additional seven times by nickname after her discussion of "the hand of one is the hand of all", including referencing them "working hand in hand together" again (R. pp. 233-253).

Following closing arguments, the Court excused the jury and heard arguments on "the issue of charging hand of one hand of all." (R. pp. 274-275). The Court ultimately denied the State's request charge it, ruling it would not charge accomplice liability because Ibarra had not been present when the search warrant was served at the residence, he had not been a witness in this case, and ruling additionally that it was unnecessary due to the fact that the statutes for trafficking and possession with intent to distribute incorporate conspiracy. (R. pp. 276-277). As additional support, the Court also pointed out how evidence of Ibarra's trafficking conviction had not been permitted in this trial based on the fact it was unfairly prejudicial. (R. p. 277, lines 14-25). Defense counsel then renewed their objection regarding the "the hand of one is the hand of all" statements in the solicitor's closing argument and moved for a mistrial based on the solicitor's misstatement of the law applicable to the case. (R. p. 278, lines 2-21). Defense counsel argued the State's closing amounted to improper burden shifting, stating "the Solicitor essentially told the jury even if you don't think you can prove that he did this beyond a

reasonable doubt, you can still find him guilty if you think someone else did it." (R. p. 278, lines 17-20). Defense counsel also stated her belief that a jury instruction would not cure the issue. (R. p. 278, lines 20-21).

The Court overruled Defense' counsel's objection and denied the motion for a mistrial, briefly stating that, prior to closing arguments, the Court had instructed the jury that closing arguments are not evidence in the case. (R. pp. 278-279). The Court then charged the jury, specifically stating during its charge on trafficking heroin that someone can be guilty if he or she "otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, or purchase [heroin]," (R. p. 289, lines 16-18); the charges on possession of cocaine with intent to distribute and possession of a weapon during a violent crime did not include similar language. (R. pp. 290-293).

ARGUMENTS

I. The Court of Appeals erred by affirming the denial of Cervantes's motion to suppress because his custodial statement was not voluntarily given under the totality of the circumstances.

The admissibility of a custodial statement depends upon whether it was voluntarily given.

In reviewing voluntariness, appellate courts review the trial court's factual findings "for any evidentiary support. However, the ultimate legal conclusion—whether, based on those facts, a statement was voluntarily made—is a question of law subject to de novo review." State v. Miller, 441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023).

"The trial [court's] determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances. . . ." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). "[A]ppropriate factors to consider in the totality-of-the-circumstances analysis include: background, experience, and conduct of the accused; age; length of custody; police misrepresentations; isolation of a minor from his or her parent; threats of violence; and promises of leniency." State v. Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2007).

Here, it is undisputed that a juvenile was handcuffed in Cervantes's presence immediately prior to the interrogation. Although officers denied making threats, the fact that a juvenile was handcuffed in Cervantes's presence is a circumstance bearing on whether the interrogation environment exerted improper influence under the totality of the circumstances. South Carolina courts have recognized that threats involving third parties may render a confession involuntary. See State v. Corns, 310 S.C 546, 552, 426 S.E.2d 324, 357 (Ct. App. 1992. ("We find that the testimony of the officers conceding they informed [appellant] his wife could be arrested, that she could be 'involved in the marijuana,' and that their children could be

taken from them amounted to an exertion of improper influence rendering [appellant's] statement involuntary. Accordingly we find the trial judge erred as a matter of law in allowing [appellant's] oral statements into evidence."); see also State v. McClure, 312 S.C. 369, 371, 440 S.E.2d 404, 405 (Ct. App. 1994) ("We recognize a threat like the one described by [appellant in which police threatened to arrest his family members unless he confessed], if it occurred, could render [appellant's] confession involuntary."). The exertion of improper influence need not be express; implied coercion may suffice. See State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990) (internal quotations omitted). ("[A] confession may not be "extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or by the exertion of improper influence.")

The Court of Appeals concluded that the officers' testimony supported the trial court's factual findings. However, even accepting those factual findings, the legal question remains whether the statement was voluntary under the totality of the circumstances. The presence of a handcuffed juvenile in Cervantes's immediate vicinity materially altered the interrogation environment. When that circumstance is properly incorporated into the totality analysis, the record does not support the conclusion that Cervantes' statement was voluntarily given. The Court of Appeals therefore erred in affirming the denial of the motion to suppress.

II. The Court of Appeals erred by affirming the denial of Cervantes's motion for mistrial where the State relied upon a theory of accomplice liability that the trial court determined would not be charged.

"A mistrial should only be granted when absolutely necessary. In order to receive a mistrial, the defendant must show error and resulting prejudice." State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Goodwin, 384 S.C. 588, 605, 683 S.E.2d 500, 509 (Ct. App. 2009).

During closing argument, the solicitor expressly referenced the doctrine of "the hand of one is the hand of all." After closing arguments, the trial court declined to charge "the hand of one is the hand of all", finding the doctrine inapplicable. Despite the absence of an accomplice liability charge, the solicitor repeatedly linked Cervantes and his co-defendant throughout closing argument, emphasizing collective conduct and shared responsibility.

In State v. Liberte, 336 S.C. 648, 521 S.E.2d 744 (Ct. App. 1999), reversal was required where improper closing argument undermined the fairness of the proceeding, even in the presence of strong evidence of guilt. Here, the State presented the jury with a theory of accomplice liability that the trial court ultimately declined to authorize. Although the jury was instructed that closing arguments are not evidence, viewed in the context of the entire record, the argument deprived Cervantes of a fair trial.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for Writ of Certiorari, reverse the decision of the Court of Appeals, and remand this matter for a new trial with instructions that Cervantes's custodial statement be suppressed.

Respectfully Submitted:

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